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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

METAL JEANS, INC., a Nevada corporation,	)	Case No. CV 15-02127 DDP (PJWx)
	)	
Plaintiff,	)	
	)	
v.	)	<b>ORDER GRANTING DEFENDANTS'</b>
	)	<b>MOTIONS FOR SUMMARY JUDGMENT</b>
	)	
STATE OF CALIFORNIA; JON RELLES; TODD BARRETT; HOWARD SOMMERS TOWING, INC., a California corporation,	)	[Dkt. 54, 55]
	)	
Defendants.	)	
	)	

Presently before the court are two motions for summary judgment, one filed by Defendants State of California, Jon Relles, and Todd Barrett ("the State Defendants"), and the other by Defendant Howard Sommers Towing, Inc. Having considered the submissions of the parties and heard oral argument, the court grants the motions and adopts the following Order.

**I. Background<sup>1</sup>**

<sup>1</sup> The following facts are drawn from the State Defendants' Statement of Uncontroverted Facts and Conclusions of Law and Plaintiff's Disputed Issues of Genuine Issues of Disputed Material Fact in response to the State Defendants' statement. Plaintiff's objections to the Declarations of Jon Relles, Todd Barrett, Heather (continued...)

1 On April 11, 2014, Defendant Todd Barrett ("Barrett"), a  
2 California Highway Patrol Officer, noticed a tractor-trailer parked  
3 on the side of the U.S. 101 freeway. Approximately twenty four  
4 hours later, Barrett noticed that the tractor-trailer had not been  
5 moved. Barrett knocked on the window of the tractor, but received  
6 no response. The trailer bore a California license plate that had  
7 been issues to a different trailer of a different make, model, and  
8 year. The tractor bore a Canadian license plate. An inquiry to  
9 Canadian authorities returned a result that read, in part,  
10 "\*\*\*Response from Canadian System - Stolen Vehicle File\*\*[.]" Below  
11 other lines of text, the report read, "\*\*\*Not on File[.]\*\*" Barrett  
12 thought this report might indicate that the tractor had been  
13 stolen.

14 Barrett also located a vehicle Identification Number ("VIN")  
15 on the trailer ("the first VIN"). The VIN did not match the  
16 license plate displayed on the trailer. Barrett later located  
17 another VIN number ("the second VIN") elsewhere, on the frame of  
18 the trailer. The first VIN appeared to be an alteration of the  
19 second VIN, with a "1" in the latter modified to appear as a "T" in  
20 the former. Barrett decided to have the tractor and trailer towed.

21 CHP Officer Heather Chaldu soon arrived at the scene, followed  
22 by a tow truck dispatched by Defendant Howard Sommers Towing, Inc.  
23 ("HST"). Before the tow truck impounded the tractor-trailer,  
24 Barrett attempted to enter the tractor to confirm that nobody was  
25 hiding or incapacitated inside the sleeping area, and to look for  
26 evidence that the tractor or trailer had been stolen, or evidence

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27  
28 <sup>1</sup>(...continued)  
Chaldu, and Seth Moffitt are overruled.

1 that would otherwise explain the tractor-trailer's prolonged  
2 presence on the side of the freeway. Barrett finally gained entry  
3 to the tractor cab by breaking the window on the passenger side.  
4 The sleeping compartment was empty, although Barrett did find  
5 license plates and registration records for several vehicles,  
6 including a Canadian license plate that had been issued to the  
7 trailer. The trailer was also empty, except for load lock bars and  
8 wheel blocks. HST then towed the tractor-trailer to an HST yard.  
9 Neither Barrett nor Officer Chaldu observed any damage being caused  
10 to the truck during the tow.

11 Defendent Relles, a CHP Officer, was assigned to investigate  
12 the tractor-trailer. On April 15, 2014, Gary Topolewski  
13 ("Topolewski") arrived at the CHP office to claim the trailer.  
14 Relles' investigation into whether the tractor-trailer had been  
15 stolen was not complete, so he declined to release the tractor-  
16 trailer to Topolewski at that time. Relles then contacted Canadian  
17 authorities, who preliminarily indicated that the tractor-trailer  
18 had not been stolen.

19 Topolewski told Relles that someone named Matt Cowley had left  
20 the tractor-trailer adjacent to the freeway. Relles was unable to  
21 contact Matt Cowley at the phone number Topolewski provided.  
22 Plaintiff later acknowledged that Matt Cowley no longer worked for  
23 Plaintiff at the time the tractor-trailer was left near the  
24 freeway, and that someone named Roger Ogden was responsible for  
25 abandoning the tractor-trailer. Relles went to the HST lot to  
26 inspect the tractor-trailer and confirmed that the trailer's first  
27 VIN had been gouged, and thus did not match the second VIN. Relles  
28 nevertheless decided to release the tractor-trailer to Topolewski

1 later in the day, and left a message with Topolewski to that  
2 effect.

3 Plaintiff's Complaint alleges causes of action under 42 U.S.C.  
4 1983 against for the allegedly unlawful search and seizure of the  
5 tractor-trailer. The Complaint also alleges causes of action for  
6 negligence and conversion. Defendants now move for summary  
7 judgment.

## 8 **II. Legal Standard**

9 Summary judgment is appropriate where the pleadings,  
10 depositions, answers to interrogatories, and admissions on file,  
11 together with the affidavits, if any, show "that there is no  
12 genuine dispute as to any material fact and the movant is entitled  
13 to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party  
14 seeking summary judgment bears the initial burden of informing the  
15 court of the basis for its motion and of identifying those portions  
16 of the pleadings and discovery responses that demonstrate the  
17 absence of a genuine issue of material fact. See Celotex Corp. v.  
18 Catrett, 477 U.S. 317, 323 (1986). All reasonable inferences from  
19 the evidence must be drawn in favor of the nonmoving party. See  
20 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 242 (1986). If the  
21 moving party does not bear the burden of proof at trial, it is  
22 entitled to summary judgment if it can demonstrate that "there is  
23 an absence of evidence to support the nonmoving party's case."  
24 Celotex, 477 U.S. at 323.

25 Once the moving party meets its burden, the burden shifts to  
26 the nonmoving party opposing the motion, who must "set forth  
27 specific facts showing that there is a genuine issue for trial."  
28 Anderson, 477 U.S. at 256. Summary judgment is warranted if a

1 party "fails to make a showing sufficient to establish the  
2 existence of an element essential to that party's case, and on  
3 which that party will bear the burden of proof at trial." Celotex,  
4 477 U.S. at 322. A genuine issue exists if "the evidence is such  
5 that a reasonable jury could return a verdict for the nonmoving  
6 party," and material facts are those "that might affect the outcome  
7 of the suit under the governing law." Anderson, 477 U.S. at 248.  
8 There is no genuine issue of fact "[w]here the record taken as a  
9 whole could not lead a rational trier of fact to find for the  
10 nonmoving party." Matsushita Elec. Indus. Co. v. Zenith Radio  
11 Corp., 475 U.S. 574, 587 (1986).

12 It is not the court's task "to scour the record in search of a  
13 genuine issue of triable fact." Keenan v. Allan, 91 F.3d 1275,  
14 1278 (9th Cir.1996). Counsel has an obligation to lay out their  
15 support clearly. Carmen v. San Francisco Sch. Dist., 237 F.3d  
16 1026, 1031 (9th Cir.2001). The court "need not examine the entire  
17 file for evidence establishing a genuine issue of fact, where the  
18 evidence is not set forth in the opposition papers with adequate  
19 references so that it could conveniently be found." Id.

### 20 **III. Discussion**

#### 21 **A. Section 1983 Claims**

22 "A plaintiff may bring an action under 42 U.S.C. § 1983 to  
23 redress violations of his 'rights, privileges, or immunities  
24 secured by the Constitution and laws' by a person or entity,  
25 including a municipality, acting under the color of state law."  
26 Awabdy v. City of Adelanto, 368 F.3d 1062, 1066 (9th Cir. 2004)  
27 (quoting 42 U.S.C. § 1983). "To state a cause of action under  
28 section 1983, [a plaintiff] must show that (1) [the defendant]

1 acted under color of state law; and (2) [the defendant] deprived  
2 [the plaintiff] of rights secured by the Constitution or federal  
3 law." Barry v. Fowler, 902 F.2d 770, 772 (9th Cir. 1990).

4 "The impoundment of an automobile is a seizure within the  
5 meaning of the Fourth Amendment." Miranda v. City of Cornelius,  
6 429 F.3d 858, 862 (9th Cir. 2005) (internal quotation omitted).  
7 Police may seize a vehicle if they have probable cause to believe  
8 the vehicle is evidence of a crime, even if the vehicle is parked  
9 in a public place. United States v. Bagley, 772 F.2d 482 at 490-91  
10 (9th Cir. 1985). Police may also conduct a warrantless search of a  
11 vehicle if there is probable cause to believe that it contains  
12 evidence of a crime, or when they reasonably believe that someone  
13 is in need of immediate aid. Maryland v. Dyson, 527 U.S. 465, 467  
14 (1999); Mincey v. Arizona, 437 U.S. 385, 392 (1978); United States  
15 v. Rodgers, 656 F.2d 1023, 1028 (9th Cir. 2011); Hopkins v.  
16 Bonvicino, 573 F.3d 752, 763-64 (9th Cir. 2009). Additionally,  
17 "[i]n their 'community caretaking' function, police officers may  
18 impound vehicles that jeopardize public safety and the vehicular  
19 movement of vehicular traffic. Whether an impoundment is warranted  
20 . . . depends on the location of the vehicle and the police  
21 officers' duty to prevent it from creating a hazard to other drivers  
22 or being a target for vandalism or theft." Miranda, 429 F.3d at  
23 864 (internal quotation and citation omitted).

24 Defendants contend that Barrett reasonably believed that the  
25 trailer had been stolen. "[W]here the material, historical facts  
26 are not in dispute, and the only disputes involve what inferences  
27 properly may be drawn from those historical facts, it is  
28 appropriate for [a] court to decide whether probable cause existed

1 . . . .” Peng v. Mei Chin Penghu, 335 F.3d 970, 979-80 (9th Cir.  
2 2003).

3 It is undisputed that the tractor-trailer had been left  
4 unattended on the side of a freeway for approximately twenty-four  
5 hours, that the trailer displayed a license plate that had been  
6 issued to a different trailer of a different make, model, and year,  
7 and that the trailer bore two different VINs.<sup>2</sup> Although Plaintiff  
8 argues that Barrett “misread” the first VIN and later stated that  
9 he entered the “wrong VIN number” when conducting a license plate  
10 check, that assertion is not supported by the record. (Opposition  
11 at 6:4; Plaintiff’s Disputed Issues of Genuine Issues of Disputed  
12 Material Fact (“PDIF”) 9.) Contrary to Plaintiff’s representation,  
13 Barrett’s report did not state that he entered a “wrong” VIN.  
14 Rather, the report states that the trailer bore two different VINs,  
15 the first of which returned a “no record” result. (Declaration of  
16 Mark Overland, Ex. 3.) Indeed, Plaintiff does not dispute that the  
17 first VIN was gouged and altered. (PDIF 50, 56.) Nor does  
18 Plaintiff dispute that Barrett was taught that thieves sometimes  
19 put the wrong license plate on a vehicle or alter a vehicle’s VIN  
20 so the vehicle will not return a stolen vehicle report. (PDIF 11.)

21  
22 <sup>2</sup> Plaintiff disputes Defendants’ characterization that the  
23 tractor-trailer was abandoned on the dirt “shoulder” of the  
24 freeway. Photographs taken by HST’s driver indicate that the  
25 tractor-trailer was adjacent to the freeway, approximately 3 or 4  
26 car widths from the nearest lane of traffic. Plaintiff also  
27 disputes that the tractor-trailer was left directly in front of an  
28 “Emergency Parking Only” sign. Both Barrett and Officer Chadhu  
stated that the vehicle was parked in such an area. The only  
evidence to the contrary is Topolewski’s testimony that he has  
never seen an emergency parking sign at that location. Topolewski  
was never asked whether he had ever looked at that area in  
particular or would have any reason to take note of any signs in  
that location. (Overland Decl., Ex. 2 at 44.)

1 Thus, even putting aside Barrett's misreading of the Canadian  
2 "Stolen Vehicle File" report, Barrett had probable cause to believe  
3 that the trailer had been stolen.<sup>3</sup>

4 Even if probable cause did not exist to suspect that the  
5 trailer had been stolen, other exceptions to the Fourth Amendment  
6 justified Barrett's actions. Barrett stated that he entered the  
7 tractor cab because he was concerned that someone might be in the  
8 sleeping compartment, either unable or unwilling to respond.  
9 Although Plaintiff disputes this fact by citation to Officer  
10 Chaldu's declaration, that evidence supports rather than  
11 contradicts Barrett's statement. (Chaldu Decl. ¶ 5-6.) Barrett's  
12 actions therefore fall under the emergency and exigency  
13 exceptions.<sup>4</sup> See Hopkins, 573 F.3d at 763.

14 Lastly, Barrett's decision to seize the tractor-trailer was  
15 justified under the community caretaking exception to the Fourth  
16 Amendment. Although violation of state vehicle codes would not in  
17 and of itself implicate the community caretaking doctrine, related  
18 factors, including whether a vehicle is impeding traffic,  
19 threatening public safety, or vulnerable to vandalism and theft are  
20 relevant to whether impoundment is warranted. See United States v.

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22 <sup>3</sup> That probable cause was sufficient to justify the search and  
23 seizure of both the trailer and the tractor. Even though the  
24 tractor was displaying the proper license plate and did not have an  
25 altered VIN, it could have been involved in the potential theft of  
26 the trailer, and indeed contained license plates and registrations  
for several different vehicles. The tractor was therefore subject  
to seizure as evidence of a potential crime. Bagley, 772 F.2d at  
490-91.

27 <sup>4</sup> Barrett's actions fall under these exceptions even assuming  
28 that the standards applicable to a home applies to the tractor's  
sleeping area. See Hopkins, 573 F.3d at 763; Dyson, 1999 U.S. at  
466-67.



1 Cervantes, 703 F.3d 1135, 1141-42 (9th Cir. 2012); Miranda, 429  
2 F.3d at 864. Here, there is no dispute that the tractor-trailer  
3 was abandoned on the side of a freeway. Although the tractor-  
4 trailer was not immediately adjacent to traffic lanes, it was in  
5 the vicinity of moving traffic. Furthermore, both Barrett and  
6 Officer Chaldu stated that the tractor-trailer was left in an  
7 emergency parking area, and Barrett stated that it was blocking an  
8 emergency parking sign. (See n. 1, supra). As such, the tractor-  
9 trailer was impeding other motorists' use of the area both by  
10 physically occupying the space and by blocking signage advising  
11 motorists of the area's intended use. Lastly, having apparently  
12 been abandoned, the tractor-trailer was a tempting target for  
13 thieves or vandals.

14 Plaintiff appears to suggest that the community caretaking  
15 rationale nevertheless does not apply because Barrett could have  
16 contacted Plaintiff, "whose identity was visible on the tractor."  
17 (Opp. at 8.) Although photographs do reveal that the tractor-  
18 trailer did bear a "Metal Jeans" name, logo, and website, the  
19 pictures do not show any phone number or any other contact  
20 information, other than the general website address. (HST  
21 Appendix, Ex. 1.) Further, the fact that Barrett might have been  
22 able to track Plaintiff down has no bearing on whether the tractor-  
23 trailer posed a hazard to community safety at the time it was  
24 seized. For these reasons, Barrett's search and seizure of the  
25 tractor-trailer did not violate the Fourth Amendment.

26 Defendants also argue that Plaintiff's Fourth Amendment claims  
27 against Relles fail because Relles, who investigated the tractor-  
28 trailer after it had been towed to HST's yard, did not seize

1 anything. Plaintiff does not respond to this argument. To the  
2 extent Plaintiff's claim against Relles is based upon his search of  
3 the tractor-trailer inside HST's yard, the claim has no merit.  
4 Relles had probable cause to investigate the tractor-trailer as  
5 evidence of a crime for the same reasons that Barrett had probable  
6 cause to search and seize the tractor-trailer in the first  
7 instance.<sup>5</sup> Further, the Supreme Court has long held that police  
8 may reasonably search vehicles that have already been lawfully  
9 impounded. See South Dakota v. Opperman, 428 U.S. 364, 371-74  
10 (1976). Plaintiff's opposition makes no mention of the Fourth  
11 Amendment claims against Relles, and therefore cites no evidence to  
12 support the baseless claims.

13 In summary, there is no evidence in the record to support  
14 Plaintiff's Fourth Amendment claims. To the contrary, the  
15 undisputed evidence establishes that Barrett's search and seizure  
16 of Plaintiff's tractor-trailer, as well as Relles' subsequent  
17 follow-up search, were permissible under several exceptions to the  
18 Fourth Amendment's warrant requirement. Because Plaintiff's Fourth  
19 Amendment claims fail, the court need not address HST's argument  
20 that it is entitled to summary judgment because it was not acting  
21 under color of law, nor the State Defendants' arguments that  
22 Barrett and Relles are entitled to qualified immunity.

23 Defendants' motion for summary judgment on Plaintiff's  
24 constitutional claims is granted.

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26 <sup>5</sup> Plaintiff does not dispute that even though Topolewski  
27 claimed he had not filed a stolen vehicle report, Relles believed  
28 Topolewski or someone else at Topolewski's company might have  
filed a false report as part of an insurance fraud scheme. (PDIF  
44.) Relles also stated that he believed a third party might have  
disputed Topolewski's ownership. (Declaration of Jon Relles ¶ 6.)

1 B. Conversion

2 Under California law, a conversion claim requires (1)  
3 ownership or right to possession of property, (2) wrongful  
4 disposition of that property, and (3) damages. G.S. Rasmussen &  
5 Assoc., Inc. v. Kalitta Flying Serv., Inc., 958 F.2d 896, 906 (9th  
6 Cir. 1992). "In order to establish a conversion the plaintiff must  
7 show an intention or purpose to convert the goods and to exercise  
8 ownership over them, or to prevent the owner from taking poession  
9 of his property. Thus, a necessary element of the tort is an  
10 intent to exercise ownership over property which belongs to  
11 another." Collin v. Am. Empire Ins. Co., 21 Cal. App. 4th 787, 405  
12 (1994).

13 Plaintiff's theory of its conversion claim is unclear.  
14 Plaintiff argues that "the crux of Plaintiff's claim for conversion  
15 is Defendant's (sic) wrongful interference with Plaintiff's  
16 property interests in the Truck and resulting damage." (Opp. at  
17 9:9-10.) Some of the evidence to which Plaintiff cites, however,  
18 pertains to the presence or absence of a refrigerator and  
19 television inside the tractor. (PDIF 33-35.) The exhibit to which  
20 Plaintiff cites does not mention any such property. (Overland  
21 Decl., Ex. 2.) Although Topolewski did testify that he saw a  
22 television in the tractor "at some point," he had "no idea" when he  
23 last saw either the television or the tractor prior to recovering  
24 the latter from the HST yard. (Declaration of Benjamin Barnouw,  
25 Ex. 6 at 122-23.) Barrett, Officer Chaldu, and the tow truck  
26 driver all stated that they did not see a television or  
27 refrigerator inside the tractor. No reasonable trier of fact could  
28 find that any Defendant converted any such property.

1 Nor could any reasonable trier of fact conclude that any  
2 Defendant converted the tractor-trailer. There is no evidence that  
3 any Defendant sought to exercise ownership over the tractor  
4 trailer. Collin, 21 Cal. App. 4th at 805. Nor is there any  
5 evidence that any Defendant "wrongfully" disposed of the tractor  
6 trailer. Plaintiff's argument that the impound of the trailer was  
7 impermissible under the California Vehicle Code is simply  
8 incorrect. (Opp. at 7.) The California Vehicle Code allows a  
9 peace officer to remove a vehicle that is left upon a freeway  
10 right-of-way for more than four hours or displays a license plate  
11 that was not issued to that vehicle, or where an officer has  
12 probable cause to believe the vehicle is or contains evidence of a  
13 crime or reasonably believes the vehicle has been abandoned. Cal.  
14 Vehicle Code §§ 22651(f),(o)(1)(b), 22655.5(b), 22699(a). The  
15 evidence is undisputed that the tractor-trailer was subject to  
16 impoundment under any and all of these provisions.<sup>6</sup>

17 Plaintiff also argues, briefly, that "[t]he evidence is  
18 disputed as to whether defendants intended to and exercised 'a  
19 reasonable opportunity to inquire' into Plaintiff's claim of  
20 ownership." (Opp. at 9:12-14.) Although not stated as such,  
21 Plaintiff's argument appears to be that Relles converted the  
22 tractor-trailer by not immediately releasing it to Topolewski until  
23 the evening, as opposed to the morning, of April 15. See  
24 Giacomelos v. Bank of Am. Nat. Trust & Sav. Assoc., 237 Cal. App.  
25 2d 99, 100 (1965) ("The law does recognize the dilemma of one in  
26 possession as a bailee or similar holder upon demand by a third

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27  
28 <sup>6</sup> For these same reasons, HST did not act wrongfully in  
carrying out Barrett's request to impound the tractor-trailer.

1 party for the goods. Such holder does not become a converter by  
2 making a qualified refusal to surrender if his real and stated  
3 purpose is to secure a reasonable opportunity to inquire into the  
4 claimant's right.")

5 Although Plaintiff contends that there is a dispute as to  
6 whether Relles' efforts were reasonable, it is undisputed that  
7 Relles spent the day inquiring with Canadian authorities as to the  
8 status of the trailer as well as investigating the trailer itself.  
9 As discussed above, regardless of the outcome of the Canadian  
10 inquiry, Relles had probable cause to suspect that the trailer was  
11 stolen, or possibly the subject of an insurance fraud scheme.<sup>7</sup>  
12 Further, because the trailer had an altered VIN, Relles had wide  
13 discretion to dispose of or release it. Cal. Vehicle Code § 10751.  
14 Accordingly, Relles' decision to continue investigating the tractor  
15 trailer for, at most, one business day was not unreasonable or  
16 wrongful.

17 For these reasons, the court grants summary judgment to  
18 Defendants on Plaintiff's conversion claim.

19 C. Negligence

20 The elements of a negligence claim are: (1) the existence of a  
21 duty to exercise due care, (2) breach of that duty, (3) causation,  
22 and (4) damages. Merrill v. Navegar, Inc., 26 Cal.4th 465, 500  
23 (2001). Defendants argue that there is no evidence that any  
24 Defendant breached a duty to Plaintiff or caused any damages.  
25 Plaintiff's responses are not well developed. Plaintiff contends

26 \_\_\_\_\_

27 <sup>7</sup> Even if there were evidence of conversion, Defendants argue  
28 that Barrett and Relles would be immune from Plaintiff's tort claim  
under California Government Code §§ 821.6 and 820.2. Plaintiff  
does not address this argument.

1 that "the crux of Plaintiff's negligence claim is the failure to  
2 use ordinary care in safeguarding Plaintiff's property rights in  
3 the Truck and resulting damage." (Opp. at 9:21-22.) There is no  
4 evidentiary support for Plaintiff's argument, such as it is. Of  
5 the five disputed facts Plaintiff cites, three pertain to the  
6 television and refrigerator, discussed above in the context of  
7 Plaintiff's conversion claim. (PDIF 33-35.) The other two pertain  
8 to whether the truck's bumper was already damaged when the HST tow  
9 truck arrived. HST's driver took pictures of the bumper prior to  
10 the tow. Barrett stated that damage to the bumper depicted in the  
11 photographs was already there when he arrived, and that he did not  
12 see any further damage being caused during the tow. (Barrett Decl.  
13 ¶¶ 10, 12.)

14 Plaintiff disputes this evidence with reference to counsel  
15 Mark Overland's Declaration and exhibits 4, 5, and 6 thereto. The  
16 Overland Declaration, however, simply misstates the evidence.  
17 Overland states that Barrett's police report indicates no damage to  
18 the tractor's bumper prior to the tow. (Overland Decl. ¶ 5.)  
19 However, exhibit 4, to which Overland cites, is not the report  
20 pertaining to the tractor, but rather the report pertaining to the  
21 trailer. (Overland Decl., Ex. 4.) Exhibit 5, also cited by  
22 Overland, is Barrett's report on the tractor. That report clearly  
23 describes damage to the right bumper, left rear wheel area, the  
24 right window (which Barrett admittedly broke to gain entry to the  
25 cab), and elsewhere. (Overland Decl., Ex. 5.) Exhibit 6 consists  
26 of excerpts from Topolewski's deposition, wherein Topolewski  
27 recounts visiting the HST yard and observing damage to the tractor  
28 consistent with Barrett's report.

1 On this record, no reasonable trier of fact could conclude  
2 that the damage to the truck, other than the broken window, was  
3 caused by any Defendant. No trier of fact could find, nor does  
4 Plaintiff argue, that Barrett's decision to break the window in the  
5 course of entering the tractor's cab to make sure nobody was hiding  
6 or incapacitated within was a breach of any duty Barrett owed to  
7 Plaintiff. Accordingly, summary judgment is granted on  
8 Plaintiff's negligence claim.

9 **IV. Conclusion**

10 For the reasons stated above, Defendants' Motions for Summary  
11 Judgment are GRANTED with respect to all claims.

12  
13 IT IS SO ORDERED.  
14

15  
16 Dated: October 17, 2016  
17



18 DEAN D. PREGERSON  
19 United States District Judge  
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